

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re K.P., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

K.P.,

Defendant and Appellant.

A156063

(Contra Costa County
Super. Ct. No. J1800618)

Defendant K.P. (Minor) was adjudged a ward of the court after admitting to a count of felony criminal threats and a count of misdemeanor assault by force likely to produce great bodily injury. The juvenile court placed Minor in a group home over the probation department's recommendation that she be placed in the Girls in Motion program at juvenile hall. A few months later, after Minor's placement at the home was terminated because her failure to follow program rules created an unsafe environment, the court placed her in the Girls in Motion program. On appeal, Minor argues that the court abused its discretion in committing her to Girls in Motion, and that she is entitled to seven days of custody credit in addition to the credits the court ordered. Minor fails to show error, and we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Initial Placement*

Minor was the subject of a wardship petition filed by the Contra Costa District Attorney under Welfare and Institutions Code section 602¹ alleging one count of felony assault by force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)) and one count of felony criminal threats (Pen. Code, § 422).

The parties reached an agreement under which the assault count was reduced from a felony to a misdemeanor, and Minor pleaded no contest to both counts, as amended, and was advised that her maximum confinement time was 3 years, 4 months. According to the police report, to which Minor stipulated as a factual basis for the plea, Minor, age 16, and her older sister (Sister) had an argument in June 2018. Sister was in the kitchen describing the argument to Minor's mother's boyfriend when Minor approached Sister with a ten-inch unsheathed knife, demanded that Sister talk about her to her face, and tried to stab Sister in the chest. Minor and Sister then began to physically fight, and after they were separated, Minor again holding the knife, ran at Sister shouting she was going to kill her, and "everyone in this house is going to die!" Minor was arrested and detained at juvenile hall.

In its disposition report, the probation department documented Minor's daily use of marijuana from 2017 to May 2018, her failure to attend school since October 2017, her previous referrals to the probation department, her history of running away from home, her referrals to Children and Family Services, and her psychological issues, including post-traumatic stress disorder, hypervigilance toward adults, suicide attempts, at least two hospitalizations under section 5150, and possible depression. A September 2017 psychological evaluation report noted that Minor "had not developed the capacity to reason maturely and to make intelligent and autonomous choices."

¹ Statutory references are to the Welfare and Institutions Code unless otherwise stated.

The department reported that while Minor was detained at juvenile hall she was “referenced in four separate incident reports for uncontrollable outburst, threatening behavior directed towards other residents, verbal altercations with staff and peers, and exhibiting strange and unusual behavior,” but that Minor had recently shown notable improvements in her behavior. While in juvenile hall, Minor attended school daily; she reported that school was going well, and she was looking forward to earning lost credits.

The department noted Minor’s behavior appeared to be “largely emotionally driven and her history with self-harm and psychiatric hospitalization is of great concern.” In the department’s view, it was imperative for Minor’s rehabilitation that she receive mental health services: “Both individual and family therapy will assist the minor in learning new coping and reasoning skills, while providing her with the necessary tools to appropriately communicate her feelings with others. Further, it will assist the family with appropriate communications and building familial relationships.”

The department recommended that Minor be placed at juvenile hall in the Girls in Motion program, a safe and secure environment with 24-hour supervision that also provided rehabilitation services that would allow Minor to address her marijuana dependency, poor decision-making skills, educational needs, and mental health needs. In Girls in Motion, Minor would have access to mental health services, would attend school daily, and would benefit from an anger management program and a cognitive behavioral program to help her develop better judgment.

At the disposition hearing in August 2018, the probation department recommended that Girls in Motion was the best placement option for Minor. The district attorney expressed concern about the level of violence associated with the sustained charges but did not object to giving Minor the opportunity to receive services at an unlocked facility, such as Children’s Home of Stockton (CHS), in light of the apparent progress she had made in custody. The district attorney noted that Minor’s “performance at that placement would, of course, dictate where we go from here in the future.” Minor’s counsel argued that Minor be allowed to return home to her mother’s care.

The juvenile court adjudged Minor a ward of the court with no termination date, and ordered that Minor be placed in an unlocked facility, preferably CHS. The court explained at that time, “I don’t want to see her go in Girls In Motion—I do not believe it would be in her best interest at this time. She’s not shown any indication that she would run that I know of, and I really would like her to be in a placement with therapy treatment every day to—she’s making some progress now—I want to build on the progress. I want her to have the kind of therapy that I think she needs. [¶] I’m going to order placement today, because I want her to be in Children’s Home of Stockton.” The court ordered Minor detained at juvenile hall pending placement at CHS. Minor entered CHS on September 24, 2018.

B. *Termination of Initial Placement and Commitment to Girls in Motion*

Minor’s placement at CHS was not successful. On November 16, 2018, CHS staff gave the probation department a seven-day notice of termination, stating that Minor’s failure to follow program rules created an unsafe environment for her peers. The probation department filed a Notice of Probation Violation Hearing on November 19, alleging that Minor failed to abide by the condition of her probation that ordered her to obey the staff and rules at her court-ordered placement. That same day, a bench warrant was issued, and Minor was arrested at CHS and taken to juvenile hall.

On November 27, 2018, Minor admitted the allegations in the Notice and was ordered detained in juvenile hall pending a disposition hearing that was set for December 10.

In advance of the disposition hearing, the probation department prepared a report that described the series of events at CHS that led to Minor’s termination. On the evening of November 1, 2018, staff members reminded Minor of the rule that she could not borrow/lend items to a peer. Minor then violated the rule, she was grounded for the violation, and she threatened the staff member. The incident escalated: Minor continued making threats after the staff member retreated to an office in fear for her safety, and at one point Minor pounded on an office window, made a gun with her hand, and pointed at the staff. Minor left the area, and then returned and resumed antagonizing and

intimidating staff through the window. Eventually Minor went to her bedroom. Later that evening, Minor left her bedroom, and noticing that she had not received credit for serving her grounding, she punched the office window and yelled, “I fucking hate [name of staff member]. I hope her and her kids die.” Two staff members resigned after the incident in fear for their safety.

On November 12, 2018, Minor was continuously going into a peer’s room and turning off the lights. Minor was directed to stop antagonizing the peer, but then took the peer’s shoes. Told of the consequences for violating a peer’s personal space, Minor continued to refuse to follow directions. She was grounded for her actions, and said that since she was grounded, she would continue to act badly. When staff encouraged her to make better choices, Minor commented that she had already gotten “staff fired.”

On November 15, 2018, Minor participated in a conflict mediation with a peer who was assigned to a different residence cottage. During the mediation, Minor stated that Sister would fight the peer, and later that evening Minor made phone calls to Sister informing her of issues she had with the peer. On November 16, Mother, Sister, another sister and Minor’s two best friends arrived at CHS for an unscheduled visit. A staff member informed Mother that a family session was required before Sister could visit, at which point Minor became upset and said, “If I can’t visit my sister, then I am about to beat that bitch’s ass.” Minor and the four other young women then ran to the peer’s cottage. Minor was told to stop but ignored the instruction. Three of the young women began banging on the windows and door of the cottage while yelling threats to one of the residents. The young women continued to try to enter the cottage; multiple staff members responded and directed them to leave the campus. Minor was observed laughing about the incident. Staff informed Mother that the police had been notified, at which point Mother directed the young women to stop and return to their car. Minor was directed to return to her cottage, but she refused to follow instructions and continued to laugh and talk with the other young women for about 10 minutes before returning to campus and the car drove away.

The department reported that CHS would not allow Minor to return to the program: the program director stated that Minor was too disruptive. According to CHS staff, Minor continued to need training to control her anger response, although she denied needing anger control therapy.

Minor continued to behave poorly after she was removed from CHS and taken to juvenile hall. She refused to follow directions, had negative interactions with peers, and was verbally abusive to staff. She received two incident reports for threats to peers. She was placed on a “Safety Plan” as a result of “aggressive and random uncontrollable anger outbursts toward staff and peers.” The plan was reviewed daily; even after a week, Minor remained on the plan because of her continued poor behavior.

The department concluded that Minor needed constant redirection and supervision; that she took no accountability for her actions; that she created a hostile environment by constantly challenging those around her, including staff and peers; and that she had disrupted the treatment environment at CHS. Opining that Minor posed a threat that was not appropriate for the open setting of foster care, the department again recommended placement at Girls in Motion.

At the disposition hearing, the probation department and the district attorney submitted on the recommendation. Minor’s counsel argued for placement at another group home. The juvenile court continued Minor as a ward of the court with no termination date and committed Minor to the Girls in Motion program at juvenile hall. In explaining its decision, the court stated that Minor’s “comments and her threats to staff are really appalling, and what she does and what she says could very well provoke huge incidents where she would be a victim herself.” The court observed that CHS was an outstanding program that had “tried to work with her. She did well, I see, at the very beginning, but . . . her anger and her mouth get her in a lot of trouble.” Minor was given credit for 131 days in custody against her three-year, four-month maximum commitment, with resulting maximum custodial time of two years, 354 days.

DISCUSSION

A. *Placement in Juvenile Hall*

1. *Applicable Law*

“Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances. This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter.” (§ 202, subd. (b).) “[P]unishment” is “the imposition of sanctions,” which may include “[c]ommitment of the minor to a local detention or treatment facility, such as a juvenile hall, camp, or ranch” or “[c]ommitment of the Minor to the Division of Juvenile Facilities.” (§ 202, subds. (e)(4)-(5).)

In determining the appropriate disposition for a delinquent minor, the juvenile court “shall consider, in addition to other relevant and material evidence, (1) the age of the minor, (2) the circumstances and gravity of the offense committed by the minor, and (3) the minor’s previous delinquent history.” (§ 725.5.) “The court may place the minor on probation, with or without declaring the minor a ward of the court, or it may declare the minor a ward and order appropriate treatment and placement. (§§ 725, 726.) Placement options include the home of a relative or extended family member; a suitable licensed community care facility or foster home; juvenile hall; a ranch, camp or forestry camp; and, the most restrictive setting, [the Division of Juvenile Facilities]. (§ 727, subd. (a), 730, subd. (a), 731, subd. (a)(4).)” (*In re Greg F.* (2012) 55 Cal.4th 393, 404.)

“A juvenile court’s commitment order may be reversed on appeal only upon a showing the court abused its discretion. [Citation.] ‘ “We must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings when there is substantial evidence to support them.” ’ ” (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329-1330.)

2. *Analysis*

The juvenile court did not abuse its discretion in committing Minor to Girls in Motion. Given Minor's documented history of substance abuse and missing school, her admitted offenses, and the undisputed evidence of her subsequent disruptive and aggressive behavior and threats to others at CHS and juvenile hall, the juvenile court could reasonably determine that the constant supervision and treatment programs available at Girls in Motion were consistent with Minor's best interest and appropriate for her circumstances.² (§ 202, subd. (b).)

Minor cites several cases including *In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396, to argue that there must be evidence in the record demonstrating a probable benefit to the minor from the commitment and the inappropriateness or ineffectiveness of less restrictive alternatives. The cases on which she relies, however, are inapposite, because they discuss section 734 and commitment to the Division of Juvenile Facilities, which are not at issue here.³

Minor also argues that it was error for the juvenile court to base its commitment order "solely on [Minor's] behavior." The argument relies on cases holding that it is error to commit a minor to the Division of Juvenile Facilities solely on the basis of the

² Unlike the August 2018 initial disposition report, the probation department's December 2018 disposition report included little information about the Girls in Motion program. But the juvenile court judge who presided over the December 2018 disposition hearing was the same judge who had presided over the case from July 2018. This judge had previously read and considered the August 2018 disposition report, which included considerable detail about the Girls in Motion program, including that it provided 24-hour supervision and security, mental health services, daily school, and programs directed to improving judgment and developing anger management skills.

³ Section 734 provides, "No ward of the juvenile court shall be committed to the Youth Authority unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the Youth Authority." The Division of Juvenile Facilities was formerly known as the California Youth Authority. (§ 1710, subd. (a); *In re Carlos J.* (2018) 22 Cal.App.5th 1, 3, fn. 2.)

gravity of her crime, such as *In re Michael R.* (1977) 73 Cal.App.3d 327, 337 [discussing the California Youth Authority]). Again, these cases have no application here. Minor was not placed at the Division of Juvenile Facilities, and as Minor concedes, the juvenile court's order was based not only on Minor's offenses but on her subsequent behavior at juvenile hall and CHS. To the extent Minor suggests that the commitment to Girls in Motion was punishment contrary to the rehabilitative purpose of the Juvenile Court Law (§ 202, subd. (b)), she mischaracterizes the record. The juvenile court was presented with evidence Minor had serious problems in managing her emotions, including anger, and that Girls in Motion provided programs to address those problems.

Minor argues that her "incompatibility" at her first placement did not constitute evidence that another group home would be ineffective or inappropriate. We disagree. Minor's record at CHS strongly suggested that a group home setting is inappropriate for her, and the trial court did not abuse its discretion in so concluding. But the issue before the juvenile court was not whether another group home might have been an appropriate placement. Contrary to Minor's suggestion, there is no requirement that the juvenile court conclude that Minor "could not access beneficial services in a less restrictive environment" before committing Minor to juvenile hall.⁴ Instead, the juvenile court was required to determine that Minor would "in conformity with the interests of public safety and protection" receive care and treatment consistent with her best interest that holds her accountable for her behavior and that is appropriate for her circumstances. (§ 202, subd. (b).) The juvenile court need not make a record that shows the explicit consideration of every possible option. Nor is the juvenile court required to try other options before ordering a restrictive placement (*In re Eddie M.* (2003) 31 Cal.4th 480, 507), even though the court did so here, by ordering Minor placed at CHS at the August 2018 disposition hearing, rather than committing her to juvenile hall.

⁴ Minor's argument on this issue rests on section 727.1, which does not apply here: section 727.1 concerns the placement of a ward in foster care or in an out-of-state program.

B. *Custody Credits*

1. *Applicable Law*

Section 726 provides that when a “minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense . . . which brought . . . the minor under the jurisdiction of the juvenile court.” (§ 726, subd. (d)(1).) A minor is entitled to credit against her maximum term of confinement for time she spent in physical confinement before disposition. (*In re Randy J.* (1994) 22 Cal.App.4th 1497, 1504-1506; § 726, subd. (d)(5) [“Physical confinement” means placement in a juvenile hall, ranch, camp, forestry camp, or secure juvenile home, or an institution operated by the Division of Juvenile Facilities].)

“It is the juvenile court’s duty to calculate the number of days [of credit] earned, and the court may not delegate that duty.” (*In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067.)

2. *Analysis*

When she entered her no contest plea, Minor understood that the maximum term of confinement for her offenses was 3 years, 4 months. Minor argues that she is entitled to 138 days of credit for confinement at juvenile hall before her December 2018 disposition hearing, rather than the 131 days ordered by the juvenile court. The record does not support her claim of error.

Minor was first detained in connection with this matter on June 9, 2018. She remained at juvenile hall until she was transported to Children’s Home of Stockton (CHS) on September 24, 2018, for a total of 108 days. (See *People v. Bravo* (1990) 219 Cal.App.3d 729, 735 [calculation of time in custody includes any day spent in whole or in part in custody].) Minor contends she was not transported to CHS until October 3, 2018, and that she was in custody for 116 days. This is incorrect. The record is clear that

October 3 was the date of the hearing at which Minor's counsel informed the court that Minor had been successfully placed.

As Minor explains, she was subsequently arrested at CHS on November 19, 2018, and was detained first at San Joaquin County Juvenile Hall and then at Contra Costa County Juvenile Hall until the December 10, 2018 disposition, for 22 additional days of physical confinement.

Thus, Minor was entitled to 130 days of credit (108 days plus 22 days) toward her commitment to Girls in Motion at juvenile hall. The juvenile court gave her 131 days credit. She is not entitled to additional credit.⁵

DISPOSITION

The order appealed from is affirmed.

⁵ The juvenile court did not abuse its discretion in giving Minor an extra day of credit. (*In re A.G.* (2011) 193 Cal.App.4th 791, 806 [juvenile court may set minor's maximum term of confinement below the minimum adult sentence, even if it does so inadvertently].)

Miller, J.

We concur:

Richman, Acting P.J.

Stewart, J.

A156063, *People v. K.P.*